SUPREME COURT OF THE UNITED STATES.

No. 450.

JOSEPH A. COOPER, PLAINTIFF IN ERROR,

vs.

JOHN DOE, LESSEE OF ROBERT B. REYNOLDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

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1 Transcript of the record and proceedings in a suit lately determined in the Circuit Court of the United States, in the sixth circuit, and in the eastern district of Tennessee, between John Doe, on the demise of Robert B. Reynolds, plaintiff, and Richard Roe, lessee of Joseph A. Cooper, defendant, to wit:

Prosecution bond.

Know all men by these presents that we, Robert B. Reynolds and John F. Pate, are held and firmly bound unto Joseph A. Cooper in the penal sum of three hundred dollars, to the payment whereof we bind ourselves and each of us, and each and every of our several heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands on this the day of April, 1866.

The condition of this bond is such that the said John Doe, lessee of Robert B. Reynolds, has commenced suit against Richard Roe, lessee of Joseph A. Cooper, for trespass and ejectment, to his damage three thousand dollars. Now, if the said Robert B. Reynolds shall prosecute said suit with effect, or on failure thereof pay all costs that may be adjudged against said plaintiff in said [in said] cause, or on failure of said defendant, if convicted, to pay and satisfy said costs, if the said plaintiff shall pay the same, then this
2 bond to be void, otherwise to remain in full force and virtue.

JOHN DOE,
Lessee of Robert B. Reynolds.
ROBERT B. REYNOLDS,
By att'y, JOHN F. BURCH.
JOHN F. PATE.

Endorsed: John Doe, lessee of Robert B Reynolds, versus Richard Roe, lessee of Joseph A. Cooper. No. 101. Filed 9th day of April, 1866. M. L. Hall, clerk.

Summons.

The President of the United States of America to the marshall of the eastern district of Tennessee, greeting:

You are hereby commanded to summon Richard Roe, lessee of Joseph A. Cooper, a citizen of the eastern district of the State of Tennessee, if to be found in your district, to be and appear before the judge of the Circuit Court of the United States, in the sixth circuit, for the eastern district of Tennessee, at the federal court-room, at Knoxville, in said State, on the third Monday in May next, then and there to answer John Doe, lessee of Robert B. Reynolds, a citizen of the State of Illinois, of a plea of trespass and eject-
3 ment, to his damage three thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, esquire, Chief Justice of the Supreme Court of the United States, this the third Monday in No-

vember, in the year of our Lord eighteen hundred and sixty-five, and of the independence of the United States the 90th.

M. L. HALL, *Clerk.*

Endorsed: Come to hand April 18th, 1866. Executed this wri- April 19th, 1866, by summoning Joseph A. Cooper, as commanded, and delivered to him same day a copy of the declaration. B. McDantnel.

Summons.

JOHN DOE, LESSEE OF ROBERT B. REYNOLDS,
versus
RICHARD ROE, LESSEE OF JOSEPH A. COOPER. } No. 101.

This summons was issued on the 9th day of April, 1866.

M. L. HALL, *Clerk.*
JNO. F. BURCH, *Att'y.*

The Circuit Court of the United States of America for the eastern district of Tennessee, May term, 1866.

Declaration.

Richard Roe, lessee of Joseph A. Cooper, a citizen of the State of Tennessee, eastern district, was summoned to answer John
4 Doe, lessee of Robert B. Reynolds, a citizen of the State of Illinois, of a plea of trespass and ejectment, and thereupon the said John Doe, by his attorney, Jno. F. Burch, complains for that Robert B. Reynolds, on the 1st day of January, 1865, demised to the said John Doe one hundred and sixty acres of land, more or less, with the houses thereon, and the appurtenances thereto, situate and being in the county of Knox, eastern district of the State of Tennessee, bounded as follows: Beginning at a stake in the South side line of the Virginia Spring survey, near to Baker's spring, being the second corner to the land conveyed to Mary J. Helens by deed of partition between Robert B. Reynolds, Rebecca J. Reynolds, Barbary W. Pate, John F. Pate, Mary J. Helms and William T. Helms, dated October 13th, 1856, and registered in book and page 530 of the register office of Knox county, Tennessee, thence north sixty degrees; west, along the said south line of the Virginia spring survey to the second corner of the lands conveyed to Rebecca J. Reynolds, in the deed of partition aforesaid, thence north thirty degrees; west, one hundred and sixty poles to a stake, third corner to Reynolds' land, conveyed to her in said deed of partition, thence south sixty degrees west, to the third corner of the land conveyed in said deed of partition to Mary J. Helms; thence south thirty de-
5 grees, east one hundred and sixty poles to the beginning, to have and to hold the same to the said John Doe, and his assigns, from henceforth, for and during and unto the full term of seven years from thence next ensuing, and fully to be completed and ended.

By virtue of which said demise the said John Doe entered upon and into the said land and houses, with the appurtenances, and became and was possessed thereof for the said term to him thereof granted as aforesaid. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the day and year aforesaid, with force and arms, entered upon and into the said land and houses, with the appurtenances, which the said Robert B. Reynolds had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe there did against the peace and dignity of the State, and to the damage of the said John Doe three thousand dollars, and thereupon he brings suit, &c.

JOHN F. BURCH, *Att'y for Pl'ff.*

To Mr. Joseph A. Cooper:

SIR: I am informed that you are in possession of or claim title to the premises described in this declaration of ejectment, or to some
6 part thereof, and I, being sued in this action as a casual ejector only, and having no title or claim to the same, do advise you to appear on the third Monday in May next, being the May term of the Circuit Court of the United States of America for the eastern district of Tennessee, at Knoxville, in person or by some attorney of that court, and then and there by a rule of that court to cause yourself to be made defendant in my stead, and defend your title to the premises aforesaid, or to such part or parts thereof as is or are in your possession, otherwise I shall suffer judgment herein to be entered against me by default, and you will be turned out of possession.

Dated 9th day of April, 1866.

Yours, &c.,

RICHARD ROE.

Endorsed: John Doe, ex dem. Robert B. Reynolds, versus Richard Roe, casual ejector. Joseph A. Cooper, tenant in possession. Filed April 9th, 1866. M. L. Hall, clerk. Brown, Deaderick & Ramsey, att'ys for pl'ffs. F. S. 1 copy. Jno. F. Birch, pl'ff's att'y.

7 *Defendants' plea.*

JOHN DOE, LESSEE OF ROBERT B. REYNOLDS,
versus
RICHARD ROE, LESSEE OF JOSEPH A. COOPER. } Ejectment.

UNITED STATES OF AMERICA, *District of East Tennessee*:

And the said Joseph W. Cooper, lessor of Richard Roe, by leave of the court by attorney comes and confesses lease, entry and ouster, and for plea to said pl'ffs' declaration, says he is not guilty of unlawfully withholding the said premises claimed by said plaintiff in manner and form as alledged in his said declaration; and of this he puts himself upon the country, &c.

NELSON, BAXTER & CHAMPION,
Att'ys for said Defendant.

And the plaintiff doth the like.

JOHN F. BURCH, *Plaintiffs' Att'y.*

Proceedings of the court.

Afterwards, to wit, on the 10th day of January, 1867, at the Circuit Court of the United States of America for the eastern district of Tennessee.

Present and presiding, the Honorable Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus } Trespass and ejectment.
JOSEPH A. COOPER.

8

It is ordered by the court that this cause be continued until the next term of this court.

Afterwards at the Circuit Court of the United States of America for the eastern district of Tennessee, on the 1st of June, 1867.

Present and presiding, the Honorable Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus. } No. 101. Trespass and ejectment.
JOSEPH A. COOPER.

By consent of parties this cause is continued until the next term of this court.

Afterwards at the Circuit Court of the United States of America for the eastern district of Tennessee, on the 30th day of December, 1867.

Present and presiding, the Honorable Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus } No. 101. Trespass and ejectment.
JOSEPH A. COOPER.

This day came the parties by their attorneys, and thereupon came a jury, to wit, Joel Parker, Samuel S. Tillery, James Wil-
9 liams, Peter Scott, J. M. Crocket, John Cruze, M. F. Smith, J. H. Mynatt, Wm. H. Swan, George H. Smith, J. C. S. McDaniel, John C. Julian, good and lawful men of the district of East Tennessee, who being tried, elected and sworn to try the issue joined between the parties, from rendering a verdict are respited until tomorrow.

TUESDAY, *December* 31*st*, 1867.

Court met pursuant to adjournment.

Present and presiding, Hon. Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus } No. 101. Trespass and ejectment.
JOSEPH A. COOPER.

Came the parties by their attorney's and came also the jury heretofore sworn in this cause, to wit: Joel Parker, Samuel S. Tillery, James Williams, Peter Scott, J. M. Crocket, John Cruze, M. F.

Smith, John H. Mynatt, Wm. H. Swan, George H. Smith, J. C. S. McDaniel and John C. Julian, who from rendering a verdict are further respited until to-morrow.

WEDNESDAY, *January 1st*, 1868.

Court met pursuant to adjournment.
Present and presiding, Hon. Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus
JOSEPH A. COOPER. } No. 101. Trespass and ejectment.

10 Come the parties by their attorneys and also came the jury heretofore sworn in this cause, to wit, Joel Parker, Samuel S. Tillery, James Williams, Peter Scott, J. M. Crocket, John Cruze, M. F. Smith, John H. Mynatt, Wm. H. Swan, George H. Smith, J. C. S. McDannel John C. Julian, who, from rending a verdict are further respited until to-morrow.

THURSDAY, *January 2nd*, 1868.

Court met pursuant to adjournment.
Present and presiding, Hon. Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus
JOSEPH A. COOPER. } No. 101. Trespass and ejectment.

Came the parties and also came the jury heretofore sworn in this cause, to wit: Joel Parker, Samuel S. Tillery, James Williams, Peter Scott, J. M. Crocket, John Cruze, M. F. Smith, John H. Mynatt, Wm. H. Swan, George H. Smith, J. C. S. McDannel, John C. Julian, who from rendering a verdict are further respited until to-morrow.

FRIDAY, *January 3rd*, 1868.

Court met pursuant to adjournment.
Present and presiding, Hon. Conally F. Trigg, judge, &c.

ROBERT B. REYNOLDS
versus
JOSEPH A. COOPER. } No. 101. Trespass and ejectment.

11 This day came the parties by their attorneys and also came the jury heretofore sworn in this cause, to wit, Joel Parker, Samuel S. Tillery, James Williams, Peter Scott, J. M. Crocket, John Cruze, M. F. Smith, John H. Mynatt, Wm. H. Swan, George H. Smith, J. C. S. McDannel, John C. Julian, who upon their oaths do say they find the issue joined in favor of the plaintiff, and that the defendant Joseph A. Cooper is guilty of the trespass and ejectment as the plaintiff in his declaration hath alledged as to an undivided four-fifths of the land and premises mentioned and described in the plaintiff's declaration, and the jurors upon their oath aforesaid, further say that they assess the plaintiff's damage to the sum of ten cents.

It is therefore considered by the court that the plaintiff R. B. Reynolds recover of the said defendant his term yet to come in an undivided four-fifths of the lands and premises mentioned and described in the plaintiff's declaration according to the finding of the jury aforesaid. It is further considered by the court that the said plaintiff recover of the said Cooper the damages assessed by the jury and the costs of this cause for which execution may issue. It is further considered by the court that a writ of possession issue to the marshall to put the said Robert B. Reynolds in possession of an undivided four-fifths of the land and premises mentioned and described
12 in the plaintiff's declaration, according to the finding of the jury aforesaid.

Thereupon on motion of defendant's attorney, a rule is granted to show cause why a new trial should be granted in this case, and in consideration thereof, it is ordered that the rule be discharged.

Thereupon the parties having entered into an agreement in writing before the commencement of the trial in this case, request the same to be entered of record. Thereupon it is ordered that said agreement be spread on the minutes, which agreement is in the following words and figures, to wit:

R. B. REYNOLDS
versus } Ejectment.
J. A. COOPER.

In this case it is agreed and admitted by the parties, for the purposes of this suit only, that plaintiff Reynolds was at the time of the sale of the land in the declaration mentioned upon the judgment obtained in the Circuit Court of Knox county, Tennessee, in the case of W. G. Brownlow versus said R. B. Reynolds and others, the legal owner of an undivided four-fifths of the land in the declaration mentioned, and at the commencement of this suit, still had the legal title thereto, unless the sale under said judgment divided the same.
13 It is further admitted that defendant was in the possession of the said land described in the declaration, claiming it under said judgment and sale at the commencement of this suit, and still is in possession, and that said land is situated in Knox county, Tennessee, and is worth more than two thousand dollars. These admissions are not to affect on other grounds of demise in this suit.

TUESDAY, *January 7th*, 1868.

Court met pursuant to adjournment.
Present and presiding, Hon. Conally F. Trigg, judge, &c.

R. B. REYNOLDS
versus } No. 101. Trespass and ejectment.
JOSEPH A. COOPER.

Came the defendant by his attorney and tendered to the court a bill of exceptions, which is signed and sealed by the court and ordered to be made a part of the record in this case. This order having been made on the 4th day of January, 1868, but not entered on the minutes of that day's proceedings, the same is entered now for

In the United States Circuit Court for the sixth district of eastern Tennessee.

Bill of exceptions.

JOHN DOE, *ex dem.* ROBERT B. REYNOLDS
versus
RICHARD ROE, CASUAL EJECTOR, JOSEPH A. Cooper, tenant in possession.
} Nov. term, 1867. Ejectment.

UNITED STATES OF AMERICA, *Eastern District of Tennessee*:

14 Be it remembered that this cause came on to be tried on this 29th day of December, 1867, before the Honorable Conally F. Trigg, judge, &c., and a jury of said district, whereupon the following proceedings were had, to wit:

The plaintiff to maintain the issue on his part read in evidence the following agreement, to wit:

R. B. REYNOLDS
versus
JOSEPH A. COOPER.
} Ejectment.

In this case it is agreed and admitted by the parties, for the purposes of this suit only, that plaintiff Reynolds was at the time of the sale of the land in the declaration mentioned upon the judgement obtained in the Circuit Court of Knox county, Tennessee, in the case of W. G. Brownlow versus said R. B. Reynolds and others, the legal owner of an undivided four-fifths in the declaration mentioned and described, and at the commencement of this suit still had the legal title thereto, unless the sale under said judgment divided the same. It is further admitted that defendant was in the possession of the said land described in the declaration, claiming it under said judgment and sale at the commencement of this suit, and still is in pos-
15 session, and that said land is situated in Knox county, Tennessee, and is worth more than two thousand dollars, these admissions are not to affect any other grounds of defence in this suit.

Endorsed: Exhibit "A." R. B. Reynolds versus J. A. Cooper. Agreement.

And rested this case.

Wherenpon the defendant to maintain the issue on his part read in evidence the following deed, to wit:

This indenture made this 28th day of April, 1865, between Marcus D. Bearden, sheriff of Knox county, in the State of Tennessee, of the one part, and Joseph A. Cooper, of said county and State of the other part, witnesseth: That whereas a suit was commenced on the 26th day of September, 1863, by William G. Brownlow, in the Circuit Court of Knox county aforesaid, against Robert B. Reynolds, John H. Crozier, Thomas J. Campbell, William H. Sneed and John C. Ramsey as defendants, in which suit or action an attachment was

also issued on the said 26th day of September, 1863, by the clerk of said court, directed to the sheriff of said county, commanding him to attach so much of said estate of the said Robert B. Reynolds, Thomas J. Campbell, John H. Crozier, William H. Sneed and John C.
16 Ramsey as would be of value sufficient to satisfy the damages claimed in said suit by the said William G. Brownlow against the defendant aforesaid, which attachment afterwards on the 28th day of September, 1863, came to the hands of J. J. Crawford, a deputy sheriff of said county of Knox, who on the same day endorsed thereon a levy which is in the following words and figures, to wit:

"Came to hand the 28th Sept., 1863, and levied this attachment and all the right, title, interest, claim and demand that R. B. Reynolds has in and to one hundred and sixty acres of land, more or less, lying in the 12th district of Knox county, adjoining the lands of Rebecca Reynolds and others. No personal property of defendant to be found in my county."

Sept. 28th, 1863.

J. J. CRAWFORD, *D. Sheriff.*

And whereas afterwards, to wit, on the 25th day of February, 1865, a judgement was rendered by the Circuit Court of Knox county aforesaid, in the suit against the said Robert B. Reynolds, William H. Sneed, John H. Crozier, in favor of the said William G. Brownlow for the sum of twenty-five thousand dollars damages; and
17 whereas afterwards on the 8th day of April, 1865, an order of sale was issued in said cause by the clerk of said court directed to the sheriff of said county of Knox, commanding him to expose the tract of land aforesaid, described in the levy aforesaid, to public sale to satisfy the judgment aforesaid, and the cost of suit which said order of sale came to my hands as sheriff of Knox county, on the said 8th day of April, 1865, and thereupon in obedience to the command contained in the order of sale aforesaid, after giving due notice of the time and place of sale by advertisements and publication as the law requires, I, as sheriff of Knox county aforesaid, exposed the said tract of land described in the levy aforesaid, to public sale on the 12th day of May, 1865, at the court house door in Knoxville, in said county of Knox, and upon said sale William G. Brownlow became the purchaser of said tract of land at the sum of three thousand dollars, he being the highest, last and best bidder. And whereas by a written agreement entered into by the said William G. Brownlow and the said Joseph A. Cooper, which is dated the 19th day of September, 1865, and which is registered in the register's office of Knox county, the sheriff of said county is authorized and directed to make a deed to the said Cooper to the said tract of land. Now,
18 therefore, in consideration of the premises and of the said sum of three thousand dollars, and also the sum of five dollars paid to me by said Cooper, the receipt whereof is hereby acknowledged, I, Marcus D. Bearden, as sheriff of Knox county aforesaid, do hereby transfer and convey all the right, title, interest, claim and demand of the said Robert B. Reynolds in the levy aforesaid, to the said

Joseph A. Cooper, his heirs and assigns forever, as fully and completely as I, a sheriff, can by law convey the same, but no further or otherwise.

Given under my hand and seal the day and year first above written.

MARCUS D. BEARDEN, *Sheriff.*

STATE OF TENNESSEE, *Knox County*:

Personally appeared before me Wm. Rule, clerk of the County Court of Knox county aforesaid, M. D. Bearden, the bargainer to the foregoing deed, with whom I am personally acquainted, and who acknowledged that he executed the same for the purposes therein contained.

Witness my hand at office in Knoxville this 5th of May, 1866.

WM. RULE, *Clerk.*

19 STATE OF TENNESSEE, *Knox County*:

Then was this deed registered in my office in deed book "D," vol. 3, page 275–6, and entered in note book "A," page 211.

Witness my hand at office in Knoxville, May 25th, 1866.

S. H. SMITH, *D. Register.*

Endorsed: Deed. M. D. Bearden, sheriff, to Joseph A. Cooper. Recorded at 3 p. m. May 25th, 1866. Register's fees $1 55. State tax 1 60, County " 1 60, Clerks fee 50, $3 70.

To the reading of which deed the defendant then and there objected. It was agreed by the parties that the land described in the foregoing deed is the same identical tract mentioned and described in plaintiff's declaration.

Thereupon in evidence the following record, to wit: Transcript of the record and proceeding had in a suit which commeneed and determined in the Circuit Court of Knox county, Tennessee, in which William G. Brownlow was plaintiff, and Robert B. Reynolds, John H. Crozier, Thomas J. Campbell, Wm. H. Sneed and John C. Ramsey were defendants.

Pros. bond.

Know all men by these presents that we, Wm. G. Brownlow
20 O. P. Temple and John Brownlow, are jointly and severally held and firmly bound unto Robert B. Reynolds, Thomas J. Campbell, John H. Crozier, Wm. H. Sneed and John C. Ramsey in the penal sum of two hundred and fifty dollars, to be void on condition that the said William G. Brownlow doth with effect prosecute an action of trespass on the case this day commenced against the said Robert B. Reynolds and others in the Circuit Court of Knox county, otherwise to pay and satisfy all costs and damages that may be awarded for failure.

Witness our hands and seals this 26th day of September, 1863.

[SEAL.] WILLIAM G. BROWNLOW,
By O. P. TEMPLE, *his Att'y.*
[SEAL.] O. P. TEMPLE.
[SEAL.] JOHN B. BROWNLOW.

Summons.

State of Tennessee to the sheriff of Knox county, greeting:

You are hereby commanded to summon Robert B. Reynolds, Thomas J. Campbell, John H. Crozier, Wm. H. Sneed and John C. Ramsey, to appear before the judge of the Circuit Court to be held for the county of Knox, at the court-house in Knoxville, on the second Monday of October next, to answer the complaint of Wm. G. Brownlow of a plea of trespass for false imprisonment to his damage
21 twenty-five thousand dollars. Herein fail not and have you then and there this summons.

Witness M. L. Hall, clerk of said court at office in Knoxville, the second Monday of June, 1863.

L. M. HALL, *Clerk.*
By his dept. WM. CRAIG.

[50-cts. internal rev.]

Endorsed: 7133. Summons. William G. Brownlow versus Robert B. Reynolds, John H. Crozier, Themas J. Campbell, Wm. H. Sneed and John C. Ramsey. Issued Sept. 26, 1863; came to hand the 28th Sept., 1863. J. J. Crawford, D. sheriff.

Search made and none of the defendants to be found in my county. October 20th, 1863.

J. J. CRAWFORD, *D. Sheriff.*

Affidavit for attachment.

WILLIAM G. BROWNLOW
versus
ROBERT B. REYNOLDS, THOMAS J. Campbell, John H. Crozier, John C. Ramsey.

The plaintiff through his agent, John B. Brownlow, makes oath that he has a good cause of action against the defendants herein named in which he will be entitled to recover a very large sum. He further swears that all of defendants have fled from this State or that
22 they so abscond or conceal themselves that the ordinary process of law cannot reach them; that he has this day instituted an action of trespass against them claiming twenty-five thousand dollars damages. Plaintiff therefore prays for an ancillary attachment against them their property in aid of this his suit.

JOHN B. BROWNLOW, *Agent.*

Sworn to and subscribed before me this Sept. 26th, 1863.

M. L. HALL, *Clerk.*
By dept. WM. CRAIG.

Attachment bond.

Know all men by these presents, that we, Wm. G. Brownlow, O. P. Temple and A. G. Jackson, are jointly severally held and firmly bound unto Robert B. Reynolds, Thomas J. Campbell, John H. Crozier, Wm. H. Sneed and John C. Ramsey, in the penal sum of fifty thousand dollars to be void if the said Wm. G. Brownlow doth with effect prosecute a writ of attachment this day commenced by him against the defendants Robert B. Reynolds and others above named, otherwise to satisfy and pay all costs that may be awarded against him for failure and also all damages that the defendants may sustain by the wrongful suing out said attachment.

23 Witness our hands and seals this, the 26th day of Sept., 1863.

[SEAL.] WILLIAM G. BROWNLOW.
By his attorney, O. P. TEMPLE.
[SEAL.] O. P. TEMPLE.
[SEAL.] A. G. JACKSON.

Ancillary attachment.

State of Tennessee, to the sheriff of Knox county, greeting:

Whereas William G. Brownlow, through his agent, John B. Brownlow, hath made oath that he believes he has good cause of action against Robert B. Reynolds, Thomas J. Campbell, John H. Crozier, Wm. H. Sneed and John C. Ramsey, in which he will be entitled to recover a very large sum. He further swears that all of said defendants have fled from the State, or that they so abscond or conceal themselves that the ordinary process of law cannot reach them; that he has this day instituted an action of trespass on the case against them, claiming twenty-five thousand dollars damages, and praying for an ancillary attachment, &c., and affidavit having been made in writing, and bond given as required by law in attachment cases:

Now, therefore, you, the said sheriff, are hereby commanded to attach so much of the estate of the said Robert B. Reynolds, Thomas J. Campbell, John H. Crozier, Wm. H. Sneed and John C. Ramsey, as shall be of sufficient value to satisfy said amount of twenty-five thousand dollars, and also all costs of suit, and such estate so

24 to secure, that the same may be subject to further proceedings thereon at a Circuit Court to be held for the county of Knox, at the court-house, in Knoxville, on the second Monday of October next, when and where you shall return this writ, showing the manner in which you shall have executed the same.

Witness M. L. Hall, clerk of said court, at office in Knoxville, the second Monday of June, 1863.

M. L. HALL, *Clerk*.
By his dep., WM. CRAIG.

Endorsed: William G. Brownlow versus R. B. Reynolds and others. 7133. Ancillary attachment. Issued Sept. 26th, 1863.

Came to hand the 28th Sept., 1863, and levied this attachment on all the right, title, interest, claim and demand that R. B. Reynolds has, in and to one hundred and sixty acres of land, more or less, lying in the 12th district of Knox county, adjoining the lands of Rebecca Reynolds and others. No personal property of the defendant to be found in my county. Sept. 28th, 1863.

J. J. CRAWFORD, *D. Sh'ff.*

SEPT. 28TH, 1863.

Levied this attachment on all the right, title, interest, and demand that J. H. Crozier has in and to a house and lot or lots, in the city
25 of Knoxville, Tennessee, fronting on Gay, being the late residence of J. H. Crozier. No personal property of defendant to be found in my county. No property of the other defendants to be found in my county.

J. J. CRAWFORD,
D. Sheriff.

SEPT. 28TH, 1863.

Levied this attachment on all the rights, title, interest, and demand that Wm. H. Sneed has in and to a house and lot on the corner of Cumberland and Prince streets, in the city of Knoxville, Tennessee, the property formerly owned by Wm. Park, deceased, more recently by J. H. Armstrong, and being the late residence of Wm. H. Sneed. No personal property to be found in my county.

J. J. CRAWFORD,
D. Sheriff.

Attachment Circuit Court, 3rd judicial circuit, Knox county, Tennessee.

Order of publication, and the publication as made in the Knoxville Whig.

WILLIAM G. BROWNLOW
versus
ROBERT B. REYOLDS *et als.*

In this cause it appearing from the affidavit of the plaintiff that the defendants, Robert B. Reynolds, Thomas J. Campbell, J. H. Crozier, Wm. H. Sneed and J. C. Ramsey have fled from the limits of the State of Tennessee, or that they so abscond or conceal themselves that the ordinary process of law cannot be served upon them. It is therefore ordered by the that publication be made for
26 four successive weeks in Brownlow's Knoxville Whig, a newspaper published in Knoxville, Tennessee, notifying the said defendants to appear at the next term of the Circuit Court of Knox county, to be held at the court-house in Knoxville, on the second Monday of October next, then and there to plead, answer or demur to the suit and demand of the plaintiff, or the will be taken as confessed and proceeded as ex parte as to them.

S. H. SMITH, *Clerk.*

Sept. 4th, p. f. $5 00.

Circuit Court, October term, 1864.

Declaration.

WM. G. BROWNLOW
versus
ROBERT B. REYNOLDS, THOMAS J. CAMPBELL, John H. Crozier, Wm. H. Sneed, John C. Ramsey.

STATE OF TENNESSEE, *Knox County:*

The plaintiff sues the defendants for twenty-five thousand dollars for maliciously and illegally arresting and imprisoning him or causing him to be arrested and imprisoned for the term of six months, to wit, from the first of December, 1861, to the first of June, 1862, and for ejecting him by force from the State of Tennessee.

TEMPLE, BAXTER & FLEMING,
Att'ys for Plaintiff.

Endorsed: Declaration. Wm. G. Brownlow versus Robert B. Reynolds. Filed October 7th, 1864. S. H. Smith, clerk.

27 *Copy of record.*

TUESDAY, *October* 11, 1864.

Court met pursuant to adjournment, present and presiding, Hon. E. T. Hall, judge, &c.

WM. G. BROWNLOW
versus
ROBERT B. REYNOLDS AND OTHERS. } Trespass on the case.

On motion of plaintiff, by attorney, the officer who levied the attachment in this cause has leave to amend his return.

SATURDAY, *February* 18*th*, 1865.

Court met pursuant to adjournment; present and presiding, Hon. E. T. Hall, judge, &c.

WILLIAM G. BROWNLOW
versus
ROBERT B. REYNOLDS *et als.*

On motion of plaintiff's attorney, leave is granted to amend the writ in this cause, changing the time of its test, and the time of its return, so as to make the writ correspond to the three term system, which was accordingly done; leave is also granted to change the form of action from "trespass on the case" to trespass.

FRIDAY, *February 24th*, 1865.

Court met pursuant to adjournment, present and presiding, Hon. E. T. Hall, judge, &c.

WM. G. BROWNLOW
versus
R. B. REYNOLDS *et als.*

This day came plaintiff and dismisses his suit as to defend-
28 ants T. J. Campbell and J. C. Ramsey. It is therefore considered by the court that the said defendants T. J. Campbell and J. C. Ramsey go hence and recover of the plaintiff and O. P. Temple and A. G. Jackson, his securities of record, the costs of this cause as to them, for which execution may issue. Thereupon defendants R. B. Reynolds, John H. Crozier and Wm. H. Sneed, being solemnly called to come into court and defend this suit, came not, but made default; and it appearing to the court that the attachment in this cause was duly levied on the property of the defendants, and that publication has been made according to law, and that the plaintiffs declaration was filed in due time at the last term of this court, it is thereupon considered by the court that the plaintiff recover of the defendants his damages, but because the same are uncertain, it is ordered that a jury come to enquire thereof. Thereupon come a jury of good and lawful men, citizens of Knox county, to wit: I, Joseph Anderson Hill, Hugh M. Murphy, Mich. Barnes, Matt. McClellan, John Vinson, W. H. Carter, Bartley Griffin, John Luster, Thomas Hall, Hugh Campbell, H. L. W. Mynatt, who being tried, elected and sworn to enquire of damages between the parties, from rendering a verdict are respited until to-morrow.

29 SATURDAY, *February 25th*, 1865.

Court met pursuant to adjournment, present and presiding, Hon. E. T. Hall, judge, &c.

WM. G. BROWNLOW
versus
R. B. REYNOLDS, WM. H. SNEED AND
John H. Crozier.

This day come the plaintiff and came also the jury heretofore sworn in this cause, who upon their oath do say that they assess the plaintiff's damages by reason of the premises in the declaration at twenty-five thousand dollars. It is therefore considered by the court that the plaintiff recover of the defendants the said sum of twenty-five thousand dollars and the costs of this cause, for all which execution may issue, and it is ordered that the sheriff sell the land levied on by the attachment in this cause to satisfy the judgment aforesaid, and venditioni exponas is awarded.

Fi fa.

State of Tennessee to the sheriff of Knox county, greeting :

You are hereby commanded that of the goods and chattels, lands and tenements of R. B. Reynolds, John H. Crozier and Wm. H. Sneed in your county, you cause to be made the sum of twenty-five
30 thousand and fifty dollars and sixty-five cents, which Wm. G. Brownlow, lately in our Circuit Court for Knox county, recovered against them for damages and costs, whereof the said Robert B. Reynolds, John H. Crozier and Wm. H. Sneed are liable and convict, as appears to us of record, and have you the said moneys ready to render before the judge of our said court on the second Monday of June next, and have you then and there this writ.

Witness, S. H. Smith, clerk of our said court at office in Knoxville, the second Monday of February, 1865.

S. H. SMITH, *Clerk*.

Bill of costs.

State tax	$3 50
Clerk, M. L. Hall, pros. bond, 25c; entering security, 25c; summons, 75c; affidavit, 5c; attach't bond, 50c; attach't, $100; docketing, 10c; 4 dockets at 10c 40c	3 30
Clerk, S. H. Smith, 4 dockets at 10c 40c; order of pub., 50c; fil. declaration, 25c; order to amend, 25c; order to amend writ, 25c; order to dismiss as to two defendants, 25c; dismissal. 25c; jury, 10c; respite of jury, 25c; final judg't, 75c; 20 subp's, $2 00; enrolling cause, 1,700 words at 10c, $1 70; copy of costs and entering same on execution docket, 50c; this writ and copy of costs, 65	8 10
D. sh'ff, J. J. Crawford, search, 25c; 3 levies $3 00	3 25
31 Amount brought down	$18 15
D. sh'ff, John Gibbs, executing 6 sub'ps, at 25c	1 50
D. sh'ff, A. S. Hudiburgh, executing 12 sub'ps, at 25c	3 00
D. sh'ff, R. Shipe, executing 2 sub'ps	50
Wit. S. R. Rodgers, 3 days, at 1 00	3 00
" S. A. Rodgers, 3 " "	3 00
" Peter French, 4 " "	2 00
" J. M. McCloud, 2 " "	2 00
" F. A. Armstrong, 2 " "	3 00
Stamps	50
Printer's fee	5 00
	$40 65

Endorsed: Wm. G. Brownlow versus R. B. Reynolds et als. Judgement February 25th, 1865, for twenty-five thousand dollars. No. 9562. Fi fa., issued March 4th, 1865. L. H. Smith, clerk. Come to hand March 15th, 1865. M. D. Bearden, sheriff.

Levied this fi fa. on a lot of personal property mentioned and described in schedule "A," hereto attached and made part of this levy as the property of Wm. H. Sneed, and search being made, and no personal property of the other defendants to be found in my county, except one marble-top centre table, belonging to defendant, John H. Crozier, upon which I levied this fi fa. as the property
32 of said Crozier; and said personal property not being sufficient to satisfy the fi fa., I also levied the same on one lot of land in Knox county, in the city of Knoxville, being the lot of ground conveyed by H. A. M. White to Wm. H. Sneed by deed dated the 4th day of January, 1860, fronting thirty-five feet and eight inches, more or less, on Gay street, and lying south of the Lamar House or City Hotel, and between said City Hotel and a store-house formerly occupied by Bearden, Son & Co., as the property of Wm. H. Sneed. No other property unincumbered, not previously levied upon, of either of defendants, to be found in my county March 30th, 1865.

M. D. BEARDEN, *Sheriff.*

Schedule "A."

Five mirrors, one ladies' mirror and toilet, two divans, four candlesticks, four bedsteads and bedding, twenty chairs, two pair of andirons, one pair of tongs and shovel, one eight-day clock, four bureaus, three water pitchers, sixteen tables, five set of window curtains, one sofa, one shovel, one rocking-chair and table, four pitchers, one book-stand, wash-stand and glass, two fire-fenders, one lounge, one book-stand, three carpets and two rugs, one wardrobe, one sink marble table, one wash bowl and pitcher, one stool, four vaces, one piano, one wash-stand, one bowl and pitcher, one
33 lot of table ware, one wash kettle, one pair of scales, one side-board stone, one biscuit block, one lot of lead pipe.

After giving the notice required by law, I exposed to public sale the personal property mentioned in the schedule hereto attached, selling each article to the highest, last and best bidder, the said property bringing the aggregate sum of $1,601 15. The lot of ground levied on and described in the within execution were not sold, by direction of the plaintiff, Wm. G. Brownlow. After selling and collecting the above-mentioned sum for the personal property, I retained thirty-six dollars commission and five dollars printer's fee, the court cost having been satisfied, and paid to the plaintiff the sum of fifteen hundred and fifty-seven dollars and ninety-seven cents, for which I have taken his receipt, which is herewith filed May the 12th, 1865.

M. D. BEARDEN, *Sheriff.*

Received of M. D. Bearden, sheriff of Knox county, the sum of fifteen hundred and fifty-seven dollars and ninety-seven cts., it being the amount obtained from the sale of the personal property above mentioned, this the 12th day of May, 1865.

W. G. BROWNLOW.

34 *Order of sale.*

State of Tennessee to the sheriff of Knox county, greeting:

Whereas at a court held by the judge of the Circuit Court for the county of Knox, at the court-house in Knoxville, on the second Monday of February, 1865, W. G. Brownlow produced to the court the original papers in a cause and an attachment issued by S. H. Smith, clerk of the Circuit Court for said county, in favor of the said W. G. Brownlow, on the judgement rendered on the 25th day of February, 1865, for twenty-five thousand dollars and 00 cents debt, and fifty-two dollars and fifty-two cents cost against R. B. Reynolds et als., by virtue of which attachment is made and therein endorsed the following levy, viz:

Levied the within on all the right, title, interest and demand that W. H. Sneed has in and to a house and lot known as the Lamar House, on the corner of Gay and Cumberland streets; also a house and lot on Cumberland street, and adjoining the Lamar House lot; also a stable and lot on the north side of Cumberland street, known as Lackey's Stable, all in the city of Knoxville; also levied the attachment upon all the right, title, claim and demand that

35 John H. Crozier has in and to a house and lot on the corner of Gay and —— streets, and being the house and lot recently occupied by J. H. Crozier, and in the city of Knoxville.

Also levied the within attachment on all the right, title, interest, claim and demand that R. B. Reynolds has in and to a certain track of land lying in the 12th civil district of Knox county, adjoining the lands of W. Ralston and the heirs of H. Baker.

Oct. 23rd, 1863.

W. H. SWAN, *Sheriff.*

And thereupon, on motion of the plaintiff, by his attorney, it is ordered by the court that the sheriff sell the property levied on as aforesaid to satisfy the debt and costs aforesaid, together with the costs on this motion, &c. You are, therefore, hereby commanded to expose to public sale, as the law directs, the said property, to satisfy the debt and costs aforesaid, together with the costs of this motion, &c., and your fees; and have you the said moneys ready to render before the judge of our said court, at a court to be held at the court-house in Knoxville, on the second Monday of June next, and have you then and there this writ.

Witness S. H. Smith, clerk of our said court, at office in Knoxville, the second Monday of Feb., 1865.

S. H. SMITH, *Clerk,*
By WILL L. HALL, *Dep. Clerk.*

36 *Bill of costs.*

State tax	$2 00
Clerk, M. L. Hall, pros. bond, 25c; sec., 25c; sum., 75c; 3 counterparts, $2 25; 3 dockets, 30c; affidavit, 5c; attachment bond, 50c; 5 ancillary attachments, $5	9 35

Clerk, S. H. Smith, 4 dockets, 40c; order to amend, 25c; affidavit, 5c; dec., 25c; 11 subp's, $1 10; order to dismiss as to two defendants, 25c; alias sum., 75c; order for jury, 25c; jury, 10c; judgment, 75c; enrolling cause, 4,350 words, $4 35; entering costs on execution docket, 50c; 4 wit. probates, 20c; order for publication, 50c; this writ and copy of costs, $1	$10 70
Sheriff, W. H. Swan, executing sum. on one defendant, $1; 3 levies, $3	4 00
Sheriff, Lem. Doogan, executing sum. on one def't, $1; one levy, $1	2 00
D. sheriff, A. S. Hudiburgh, executing 2 subp's	50
" John Gibbs, executing 7 subp's	1 75
Sp. d. sheriff, Hugh Brown, executing one subp's	25
" J. Low, executing one subp.	25
Wit. Geo. Wade, one day and 36 miles	2 04
" W. M. Burnette, one day and 52 miles	2 68
" J. M. Meek, four days and 50 miles	6 00
" L. R. Rodgers, three days and	3 00
Printer's fee and stamps	5 50
	$52 52

37 Endorsed: Wm. G. Brownlow versus Wm. H. Sneed et al. 9562.—Order of sale issued April 8th, 1865. S. H. Smith, clerk, by Will L. Hall, d. clerk.

Come to hand same day issued.

M. D. BEARDEN, *Sheriff.*

After giving the notice required by law I exposed to public sale the tract of land mentioned and described in the order of sale hereto attached as having been levied on as the property of the defendant Robert B. Reynolds, and at and upon said sale at the court-house door, in Knoxville, Wm. G. Brownlow became the purchaser at the sum of three thousand dollars, he being the highest, last and best bidder therefor. The two houses and lots mentioned and described in the order of sale as being the property of Wm. H. Sneed and John H. Crozier were also sold at the same time and place, W. G. Brownlow becoming the purchaser for both giving for the one levied on as the property of John H. Crozier five thousand and five hundred dollars, he being the highest, last and best bidder; and also the one levied on as the property and late residence of Wm. H. Sneed, paid the sum of three thousand and two hundred dollars. The one known and described in the order of sale as the Lamar House was not sold, by direction of the plaintiff.

38 After collecting the above mentioned sums I retained $238 00 commissions and $5,00 printers fee; $52 52 court

costs and paid to the plaintiff $11,405 00 and took his receipt, which is herewith filed this May 12th, 1865.

M. D. BEARDEN, *Sheriff.*

Received of M. D. Bearden, sheriff, eleven thousand four hundred and five dollars, this the 12th day of May, 1865.

W. G. BROWNLOW.

Writ of possession.

State of Tennessee to the sheriff of Knox county, greeting:

Whereas at the February term, 1865, of the Circuit Court of Knox county, Wm. G. Brownlow obtained a judgment against R. B. Reynolds and others, and whereas the attachment in the cause was among other things levied upon all the right, title, interest, claim and demand that Robert B. Reynolds has in and to one hundred and sixty acres of land more or less, lying in the 12th civil district of Knox county, adjoining the lands of Rebecca Reynolds and others, and whereas on the 8th day of May M. D. Bearden, sheriff, sold the said lands at the court-house door in Knoxville after giving legal notice that the said land would be so sold, and whereas Wm. G. Brownlow became the purchaser, he being the highest, last
39 and best bidder. You, the said sheriff, are hereby commanded to put the said Wm. G. Brownlow into peaceable possession of the aforesaid tract of land, and make due return of this writ to the judge of our Circuit Court to be held at Knoxville on the second Monday of February next, when and where you will make known how you shall have executed this writ. Herein fail not.

Witness S. H. Smith, clerk of said court, at office in Knoxville, the second Monday of October, 1865.

S. H. SMITH, *Clerk.*

Endorsed: Wm. G. Brownlow versus R. B. Reynolds et al. No. 9562.—Writ of possession iss'd Nov. 10th, 1865. S. H. Smith, clerk.

Came to hand same day issued and executed as commanded Jan. 1st, 1866.

M. D. BEARDEN, *Sheriff.*

THURSDAY, *February 15th*, 1866.

Court met pursuant to adjournment. Present and presiding, Hon. S. R. Rodgers, chancellor, &c.

WM. G. BROWNLOW
vs.
WM. H. SNEED *et al.*

In this cause a judgement having been rendered at the February term, 1865, of this court, a motion of defendant, Wm. H. Sneed, by attorney, was made, praying the court that a rule be granted

to show cause why the judgment aforesaid, and all the proceedings had in this cause in this court, should be set aside and for nothing held.

SATURDAY, *February* 17*th*, 1866.

Court met pursuant to adjournment. Present and presiding, Hon. S. R. Rodgers, judge, &c.

WM. G. BROWNLOW
vs.
WM. H. SNEED *et al.*

Defendant, Wm. H. Sneed, by attorney, moved the court that the verdict of the jury and all the subsequent proceedings in this cause be set aside, and that defendant Sneed be allowed to, for good cause to be shown, to plead in said cause. This motion be subject to be overruled by a motion in this cause made on a former day of this term.

TUESDAY, *June* 26*th*, 1866.

Court met pursuant to adjournment. Present and presiding, Hon. E. T. Hall, judge, &c.

WM. G. BROWNLOW
vs.
WM. H. SNEED *et al.*

The motion of the defendant's counsel to set aside the judgment rendered at a former term of this court and allow Wm. H. Sneed to plead, coming on for hearing having been agreed by the coun-
41 cil and considered by the court, it is ordered by the court that the same be disallowed.

WM. G. BROWNLOW
vs.
WM. H. SNEED *et al.*

The motion of defendant's counsel to set aside the judgment rendered at a former term of this court and allow defendant Wm. H. Sneed to plead coming on for hearing having been agreed by the counsel and considered by the court, it is ordered by the court that the same be disallowed.

FRIDAY, *June* 29*th*, 1866.

Court met pursuant to adjournment. Present and presiding, Hon. James P. Swan, judge, &c.

WM. G. BROWNLOW
vs.
WM. H. SNEED *et al.*

Came the defendant Wm. H. Sneed, by attorney, and prays an appeal from the decision of the court on a motion made on a former

day of the present term of this court to set aside the judgment rendered in this cause and allow the defendant to plead to the next term of the Supreme Court of the State of Tennessee to be held at Knoxville on the second Monday of Sept. next, and having given bond as required by law the appeal was granted.

42 *Appeal bond.*

STATE OF TENNESSEE:

Know all men by these presents that we, Wm. H. Sneed, as principle, and John Williams, as security, are held and firmly bound unto Wm. G. Brownlow in the sum of five hundred dollars.

The condition of the above obligation is such that whereas heretofore, to wit, on the 26th day of June, 1866, the said Wm. G. Brownlow recovered two judgments in the Circuit Court of Knox county for the sum of ——, costs of suit, and whereas the said Wm. H. Sneed has this day prayed an appeal of said cause from said court to the Supreme Court at Knoxville, Tennessee, in order that said causes may be reheard and finally determined in said Supreme Court. Now if the said Wm. H. Sneed shall effectually prosecute said appeal in said Supreme Court then this obligation to be void, or in case of failure to prosecute the same then to pay all costs and damages, and fully to comply with the judgment of said court in said cause.

Given under our hands and seals this 28th day of June, 1866.

[SEAL.] W. H. SNEED,
By D. P. JENKINS, *his Att'y.*

[SEAL.] JOHN WILLIAMS.

43 Endorsed: Brownlow versus Sneed. Appeal bond filed June 29th, 1866. Will R. McBath, cl'k.

STATE OF TENNESSEE, *Knox County:*

I, Will R. McBath, Clerk of the Circuit Court of Knox county, certify that the foregoing is a full, true and perfect transcript of the record and proceedings had in the above cause, in the Circuit Court of Knox county, as appears from record and remains on file in my office.

Given under my hand and seal of said court, at office, in Knoxville, the 15th day of January, 1867.

WILL R. McBATH, *Cl'k.*

Bill of costs.

Clerk Will R. McBath, transcript of record and proceedings, four thousand words, *a* 10 c	$400
Certificate and seal of court	75
	$475

Endorsed: Exhibit "C" to bill of exceptions.

To the reading of which record the defendant then and there objected, but said objection was overruled by the court and said record was permitted to be read as evidence in the cause. This was all the material evidence in the cause.

Upon the foregoing facts the defendant, by his counsel, asked the honorable court to instruct the jury as follows: That under
44 the laws of the State of Tennessee, the Circuit Court of Knox county had jurisdiction of attachment cases and actions of trespass, and that as it is declared in the judgment in the said suit of Wm. G. Brownlow against Robert B. Reynolds and others, that the attachment was duly levied on the property of the defendants, and that publication has been made according to law, this adjudication was conclusive upon parties and privies, until the same should be reversed by a court of error; that the sheriff's deed to the defendants made, by virtue of the sale under and by virtue of the judgment of the Circuit Court of Knox county, in the case of Wm. G. Brownlow against Robert B. Reynolds and others, communicated a good title to the premises in controversy, to the defendant as against the plaintiff, and that the regularity of the proceedings in said suit of Wm. G. Brownlow vs. Robert B. Reynolds et al., could not be collatterally inquired into in this cause, which instruction the court refused to give, but charged the jury as follows (among other points not excepted to;) that the summons issued in the case of Brownlow vs. Reynolds et al., was not served upon the plaintiff in this suit, and then question then was whether the attachment would bring him into court; that the affidavit upon which the attachment was issued, set out in exhibit "C," and bearing date the 26th Septem-
45 ber, 1863, was not made in conformity to the attachment laws of Tennessee; that it does not show the court in which suit was brought, or state specifically the cause of action or nature thereof, as required under the decisions of the Supreme Court of this State, so as to connect itself with the summons in the action of trespass mentioned and set out in said exhibit; that it does not appear that any publication was in fact made, and that the Circuit Court of Knox county acquired no jurisdiction of said cause; that the attachment and proceedings thereon was not sufficient to bring said Reynolds before the court; and that there was no authority for the rendition of said judgment, and that the levy of the attachment, the judgment of the court, and the sale by the sheriff were utterly null and void, and the sheriff's deed made to the defendant, marked "D," were utterly null and void, and conveyed no title, and could be relied on in the defence of this action.

And to the action of the honorable court, in refusing to instruct the jury as above requested, and in charging the jury as above stated, the defendant, by his counsel, excepts in law, and states as the principle ground of his exception, that the honorable court should have charged the jury that the proceedings of the Circuit Court of Knox county, set out in exhibit "C" are valid and binding upon the parties, and were sufficient to authorize the sheriffs in said exhibit "C," mentioned, and also to authorize and make valid

the said sheriff's deed, marked exhibit "B;" that the same communicated a good title to the defendant, which he can rely upon in bar of this action; and that said judgment and proceedings cannot be collatterally assailed in this honorable court. The said defendant also excepts in law to action of his honor in refusing to make absolute the rule obtained in this case, to show cause why a new trial should not be granted. On the argument of the rule for a new trial the affidavit of Samuel L. Gilson, marked exhibit "D." and hereunto annexed, was read to the honorable court.

In the United States Circuit Court for the sixth circuit and dist. of eastern Tenn.

JOHN DOE, *ex dem.*, ROBT. B. REYNOLDS
versus
RICHARD ROE, CASUAL EJECTOR, AND Joseph A. Cooper, tenant in possession.

UNITED STATES OF AMERICA,
Eastern District of Tennessee:

Samuel L. Gilson, having been first sworn according to law, makes oath and says, that he is well acquainted with the value of the premises in controversy in this suit, and that to the best of his knowledge and belief said premises are worth seven thousand dollars, and that the undivided four fifths sued for by the plain-
47 tiff, are worth four-fifths of seven thousand dollars, to wit, five thousand and six hundred dollars. He also further says, that he has no interest in the event of said suit, and in no way related to either of the parties; and further saith not.

SAMUEL L. GILSON.

Sworn to and subscribed before me in open court, Jan. 4th, 1868.
M. L. HALL, *Cl'k.*

Endorsed: Exhibit "D." Samuel L. Gilson, affidavit of value of premises in controversy. R. B. Reynolds, lessee, &c., versus Joseph A. Cooper.

And to the charge of the court and the action of his honor, in refusing to instruct the jury as requested, and in refusing to grant a new trial, the defendant, by his counssl, excepts in law, and tenders this his bill of exceptions, which he prays may be signed and sealed by the court and made part of the record, which is done accordingly this the 6th day of January, 1868.

[SEAL.] CONNALLY F. TRIGG.

Endorsed: Doe, ex dem., Reynolds versus Cooper et al.

Bill of exceptions.

JOSEPH A. COOPER, pl'ff in error,
versus
JOHN DOE, LESSEE OF ROBERT B. REYNOLDS, def't in error.

And now, before the justices of the Supreme Court of the United States, comes the said Joseph A. Cooper, by his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

First. The presiding judge of the Circuit Court of the United States for the eastern district of Tennessee, erred in refusing to instruct the jury on the trial of said cause in said Circuit Court, as requested by defendant's counsel; that under the laws of the State of Tennessee the Circuit Court of Knox had jurisdiction of attachment cases and actions of trespass on the case, and that as it is declared in the judgment in the said suit of Wm. G. Brownlow against Rob't B. Reynolds and others, that the attachment was duly levied on property of the defendants, and that publication had been made according to law, this adjudication was conclusive upon parties and privies until the same should be reversed by a court of error.

Second. The said presiding judge erred in refusing to instruct said jury upon said trial, as prayed by defendant's counsel;
49 that the sheriff's deed to the defendant, made by virtue of the sale under and by virtue of the judgment of the Circuit Court of Knox county, in the case of Wm. G. Brownlow versus Wm. H. Sneed et al., communicated a good title to the premises in controversy to the defendant as against the pl'ff; and that the regularity of the proceedings in said suit of W. G. Brownlow vs. W. H. Sneed et al., could not be collaterally inquired into in this cause.

Third. The said presiding judge erred in instructing said jury in said trial that the affidavit upon which the attachment was issued, set out in exhibit "C," and bearing date 26th September, 1863, was not made in conformity to the attachment laws of Tennessee; that it does not show the court in which the suit was brought or state specifically the cause of action, so as to connect itself with the summons in the action of trespass mentioned and set out in said exhibit; that it does not appear that any publication was in fact made; that the Circuit Court of Knox county acquired no jurisdiction of said cause; that there was no authority for the rendition of said judgement; and the levy of the attachment, the judgement of the court and the sale by the sheriff were utterly null and void, and the sheriff's sale and deed made to the defendant, marked "D," were utterly null and void, communicated no title, and could not be relied upon in the defence of this action.

50 Fourth. Said presiding judge erred in overruling the motion made the said Joseph A. Cooper for a new trial of

said cause and in discharging the rule for a new trial entered in behalf of said defendant.

Fifth. Said Circuit Court of the United States erred in giving judgement in said cause in favor of the plaintiff below, whereas, by the law of the land, said judgement ought to have been given in favor of the defendant below, the said Joseph A. Cooper.

And the said Joseph A. Cooper, plaintiff in error, prays that the judgements aforesaid for the errors in the record and proceedings aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he has lost by reason of said judgement.

THOS. A. R. NELSON,
BAXTER, CHAMPION & RICKS,
GEO. ANDREWS,
Att'ys for Pl'ff in Error.

Endorsed: Joseph A. Cooper versus John Doe, lessee of Robt. B. Reynolds. Assignment of errors. Filed January 6th, 1868. M. L. Hall, clerk.

51 UNITED STATES OF AMERICA, *ss*:

To Robert B. Reynolds, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of East Tennessee, wherein Joseph A. Cooper is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Connally F. Trigg, judge of the District Court of the United States for the district of East Tennessee, and presiding judge of said Circuit Court, this 6th day of January, 1868.

CONNALLY F. TRIGG,
District Judge, presiding.

We acknowledge service of this citation this 7th day of January, 1868.

GEORGE BROWN, &
JAS. M DEADRICK,
Att'ys for Reynolds.

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the Circuit Court of the United States for the circuit and district of East Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said Circuit Court before you, wherein John Doe, lessee of Robert B. Reynolds, is plaintiff, and Joseph A. Cooper is defendant, a manifest error hath happened to the great damage of the said Joseph A. Cooper, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

53 Witness the Honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this 1st Monday, being the 2nd day of December, in the year of our Lord 1867.

[SEAL.] M. L. HALL, *Clerk.*

Circuit Court of the United States for the eastern district of Eastern Tennessee.

JOHN DOE, *ex dem.* ROBT. B. REYNOLDS
versus
RICHARD ROE, CASUAL EJECTOR, JOS. A. Cooper, tenant in possession.

UNITED STATES OF AMERICA,
Eastern district of East Tennessee:

Know all men by these presents, that we, Joseph A. Cooper, Joseph A. Mabry and William H. Swan are held and firmly bound unto Robert B. Reynolds in the sum of one thousand dollars, to be paid to the said Robert B. Reynolds, his executors or administrators, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators firmly by these presents. Sealed with our seals and dated this ninth day of January, 1868.

Whereas the above-named Joseph A. Cooper hath presented a writ of error to the Supreme Court of the United States to reverse the judgement rendered in the above-entitled suit by the Cir-

54 cuit Court of the United States for the sixth circuit and eastern district of Tennessee:

Now, therefore, the condition of this obligation is such that if the above-named Joseph A. Cooper shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] JOSEPH A. COOPER.
[SEAL.] W. H. SWAN
[SEAL.] JOS. A. MABRY.

Sealed and delivered in presence of—
M. L. HALL, *Clerk.*

Approved:

CONNALLY F. TRIGG,
U. S. District Judge, presiding.

Endorsed: R. B. Reynolds, lessee, versus Joseph A. Cooper. Bond. Filed January 6th, 1868. M. L. Hall, clerk.

UNITED STATES OF AMERICA,
Eastern District of Tennessee:

I, M. L. Hall, clerk of the Circuit Court of the United States for the sixth circuit and eastern district of Tennessee, do hereby certify that the foregoing transcript is a true copy from the record
55 and proceedings of the case of John Doe on the demise of Robert B. Reynolds, plaintiff, vs. Richard Roe, lessee of Joseph A. Cooper, defendant, lately determined in said court.

Given under my hand and the seal of said court, at Knoville, this 31st March, 1868.

[SEAL.] M. L. HALL, *Clerk.*

Bill of Costs.

R. B. REYNOLDS
versus
JOSEPH A. COOPER.

Clerk, M. L. Hall, sum., $1 20; iss'g 3 subp's, *a* 25; 11 record., *a* 15; 2 bonds, 6 fol., *a* 15· 11 wit. probates, *a* 10; 5 wit. sworn, *a* 10; writ of error, $1 20; filing papers, $1 70; transcript, 19 fol., *a* 10	$20 90
Marshall McDannel, executing sum., $2 00; 6 wit., 36	2 36
D. M., E. C. Trigg, executing 5 sup., *a* 50	2 50
D. M., J. M. Pickle, ex. 4 sup., *a* 50	2 00
Wit. G. B. Kennedy, 5 d., *a* $1 50; 80 m., *a* 5	11 50
" W. L. Kennedy, 9 d., *a* $1 50; 20 m., *a* 5	14 50
" B. C. Hutton, 7 d., *a* $1 50; 12 m., *a* 5	11 10
" G. W. Summers 4 d., *a* $1 50	6 00
Att'y J. L. Burch	20 00
	$90 86

Supreme Court of the United States.

JOSEPH A. COOPER, Plaintiff in Error,

vs.

Robert B. Reynolds's Lessee.

BRIEF FOR PLAINTIFF.

THOS. A. R. NELSON,
HORACE MAYNARD,
Attorneys for Plaintiff in Error.

McGILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

JOSEPH A. COOPER, plaintiff in error,

vs.

ROBERT B. REYNOLDS'S Lessee.

BRIEF FOR PLAINTIFF.

On the 26th of September, 1863, one William G. Brownlow brought his action for trespass for $25,000 damages in the circuit court of Knox county, Tennessee, against defendant Reynolds and others, by original summons and ancillary attachment. The summons was returned not "to be found;" the attachment was levied upon the tract of land, the subject of the present suit.

Brownlow so prosecuted his action that on the 25th of February, 1865, he recovered judgment against Reynolds for $25,000, and an order to the sheriff to sell the land attached.

On the 8th of April, 1865, a writ of *venditioni exponas* issued to the sheriff, who, by virtue thereof, sold the land to said Brownlow on the 12th of May, 1865.

A writ of possession issued November 10, 1865, and on the 1st of January, 1866, Brownlow was by the sheriff placed in possession of the premises.

Meanwhile Brownlow had by written agreement authorized and directed the sheriff to make a deed for the land to the plaintiff, Cooper. The deed was executed accordingly and registered.

The present suit was commenced in April, 1866, in the

circuit court of the United States for the eastern district of Tennessee, and was tried December 29, 1867, January 7, 1868.

Upon the trial the following agreement was made, of record p. 6:

"R. B. REYNOLDS } Ejectment.
vs.
J. A. COOPER. }

"In this case it is agreed and admitted by the parties, for the purposes of this suit only, that plaintiff, Reynolds, was, at the time of the sale of the land in the declaration mentioned upon the judgment obtained in the circuit court of Knox county, Tennessee, in the case of W. G. Brownlow *vs.* said R. B. Reynolds and others, the legal owner of an undivided four-fifths of the land in the declaration mentioned, and at the commencement of this suit still had the legal [title] thereto, unless the sale under the said judgment divided [divested?] the same. It is further admitted that the defendant was in the possession of the said land described in the declaration, claiming it under said judgment and sale at the commencement of this suit, and still is in possession, and that said land is situated in Knox county, Tennessee, and is worth more than $2,000. These admissions are not to affect on [any?] other grounds of decision [defense?] in this suit."

This agreement dispenses with the necessity of considering any other questions than those presented on pages 22 and 24. If the sheriff's sale, under which the plaintiff in error claims title, was not void, then the verdict and judgment, that the defendant in error recover an undivided four-fifths of the tract of one hundred and sixty acres of land, more or less, mentioned in the declaration, was erroneous. Otherwise it cannot be disturbed.

The plaintiff in error claims title under the sheriff's deed, (record 7–9,) which is admitted (p. 9) to cover the land in dispute. The deed rests upon the order of sale or writ of *venditioni exponas* and of the return thereon, (exhibited in record, pp. 17,18.) The order of sale is founded upon the judgment for $25,000, and costs, pronounced on the 24th February, 1865,

by the circuit court of Knox county, Tennessee, in favor of William G. Brownlow, against R. B. Reynolds, W. H. Sneed and J. H. Crozier, (record p. 14,) in the suit commenced by summons and ancillary attachment on the 26th September, 1863. (Record, pp. 9–12.) These proceedings were held to be utterly null and void on the trial of this action of ejectment in the court below; and, in behalf of the plaintiff in error, it is insisted that the instructions of his honor were erroneous, for the following reasons:

1. The suit by summons is authorized by the Code of Tennessee, (p. 541, § 2815.) Section 2747 directs that actions of *tort* may be brought on "the facts of the case." The declaration in record (p. 13) is in accordance with form No. 19, prescribed in the code, (p. 561.) The ancillary attachment (record, p. 11) was authorized by the code, (§§ 3455, 3462, 3474.) Previous to the adoption of the code, it was determined, in Thompson *vs.* Carper, (11 Hum., 545,) that the attachment may issue simultaneously with the original summons.

In the schedule to the amended constitution of Tennessee, it is provided by section 4 that "in all actions for *torts* brought, or which may hereafter be brought, in the courts of this State by attachment levied upon the property of the defendant, the courts shall have power to proceed to judgment and collection of the same as upon contracts, without personal service of process upon the defendant, until the legislature may see fit to change the law in such cases." (See Laws of Tennessee, 1865, p. 10.) This provision was expounded in the cases of Swan *vs.* Roberts, (2 Cold., 153,) and Boggess *vs.* Gamble, (3 Cold., 148.)

In the first cited case it was held, among other things, that the schedule confers the same right to sue by original attachment in actions *ex delicto* that previously existed in actions *ex contractu*, and sustains such actions as were then pending by ancillary attachment, where property had been attached without personal service of process. In the case last named it was held that the schedule extends only to actions of *tort* brought previous to the 22d February, 1865, the date of the

adoption of the amended constitution. As the action in the case now under consideration was brought on the 26th September, 1863, it is embraced in the schedule and sustained by the cases cited, unless it is obnoxious to the objections specified by his honor in his instructions to the jury, (record, p. 22,) as to affidavit and publication.

2. The affidavit referred to is contained in the record, (p. 10) [22,] and is in substantial conformity to the requirements of the code, (§ 3469 and § 3455, sub-sections 2, 5.) The words in the affidavit, "have fled from the State," are equivalent to the words "removed from the State," in sub-section 2. If not, the words "they so abscond or conceal themselves that the ordinary process of law cannot reach them," are equivalent to the words in sub-section 5, "where he absconds, or is absconding or concealing himself or property." This construction is sustained by § 3470, which provides that "it is no objection to the attachment that the bill, affidavit, or attachment states in the alternative, or otherwise, more than one of the causes for which an attachment may be sued out;" and by § 3477, which provides that "the attachment law shall be liberally construed." But his honor instructed the jury that "the affidavit upon which the attachment was issued * * * was not made in conformity to the attachment laws of Tennessee; that it does not show the court in which suit was brought, or state specifically the cause of action, or nature thereof, as required under the decisions of the supreme court of this State, so as to connect itself with the summons in the action of trespass mentioned." * * This instruction was erroneous, because it is provided in § 3472, in regard to the affidavits and bond mentioned in §§ 3469 and 3516, that "the affidavit and bond shall be filed by the officer taking them in the court to which the attachment is returnable, and *shall constitute part of the record in the cause.*"

In this case the affidavit (in record, p. 10) was made before M. L. Hall, clerk of the court, who issued the summons on p. 10 and the ancillary attachment on p. 11; and the affidavit, bond, and attachment, being thus parts of the record, should be construed together and in connection with the

summons, which is part of the same record. The summons, affidavit, bond, and attachment all bear the same date, viz, 26th September, 1863. The court is the same; the parties are the same; the amount of damages specified in the summons, affidavit, and ancillary attachment is the same. The attachment bond is in double the amount claimed, as required by the code, (§ 3471.) The prosecution bond correctly describes the suit as amended pursuant to the leave granted in record, p. 13. The affidavit states that the defendant has this day instituted his action, and prays for the issuance of an ancillary attachment. It was taken before "M. L. Hall, clerk," known by the court as its principal officer, who had jurisdiction to issue an ancillary attachment in aid of no action of trespass for $25,000, not pending in the court of which he was clerk. It is true the affidavit does not specifically name the court in which the suit was brought, but, in view of the facts just referred to, and in view of the fact that the affidavit was deposited in and formed part of the records of the circuit court of Knox county, is it possible to doubt that it was part of the proceeding by summons and attachment?

The cases upon which the opinion of his honor is founded are, Thompson *vs.* Carper, (11 Hum., 542;) Morris *vs.* Davis, (4 Sneed, 453;) Swan *vs.* Roberts, (2 Cold., 157;) and Smith *vs.* Foster, (3 Cold., 145.) The cases in 11 Humphreys and 4 Sneed were decided upon the act of 1843, chapter 49, which was much less extensive in its provisions than the code, which went into operation on the 1st May, 1858, as held in 2 Head., 36. The requirements in the leading case of Thompson *vs.* Carper are, that "it should be stated in the affidavit and alleged in the attachment that a suit had been commenced by the plaintiff against the defendant, the nature thereof, the tribunal in which it is pending, and that the cause of action stated is just." These requirements are literally complied with in the case now before this honorable court, with two exceptions, the one, that the word "good" is substituted for the word "just," in describing the cause of

action; the other, that it does not designate, in words, the tribunal in which the suit was pending.

Without commenting on the difference in the provisions of the act of 1843, as quoted in 11 Hum., 543, and the code, § 3455, it is proper to observe that Thompson v. Carper originated before a justice of the peace, and that the reason why *he* should be required to describe the tribunal in which the suit is instituted is much stronger than any reason which would be applicable to *the clerk* of the identical court in which it is brought. In the case of Morris *vs.* Davis, (4 Sneed, 454,) it is said that "the attachment in this case has no reference of any kind to the action of trespass in aid of which it was issued," and it was held that, under the act of 1843, the clerk had no power to issue it. The affidavit in Swan *vs.* Roberts, (2 Cold., 154, 155,) is almost identical in its terms with the case at bar; and although Thompson *vs.* Carper is quoted in the opinion of the court, it is said (on p. 160, last par.,) that "although the affidavit and the recitals in the attachment are not in strict conformity to the rules laid down, they *substantially* meet the requirements of the law, and the ancillary attachments *lawfully* issued."

In Smith *vs.* Foster, (3 Cold., 145,) where Thompson *vs.* Carper is again quoted, it is said, "the affidavit does not state that any suit whatever had been commenced or was then pending in any tribunal;" and that case is not, upon its facts, a case in point. In Woodfolk *vs.* Whitworth (5 Cold., 562) there is no connecting link between the summons and the attachment, and Thompson *vs.* Carper, Morris *vs.* Davis, Smith *vs.* Foster are again cited on page 564. And the court say that "these cases must be considered as having established the principle, as the law of this State, that, in cases of ancillary attachment, both the writ and the affidavit must refer to and describe and identify the suit in aid of which the writ issues, so as to show unmistakably upon their face that they form an adjunct of that particular proceeding." But the court proceed to remark, on page 565: "What our decision should be if a case were to be presented in which

the attachment papers, though clearly referring to, describing, and identifying the principal suit, *should still fall short, in one or more particulars*, to the rule enunciated in the above-cited cases, we do not now assume to say." It will thus be seen that Thompson *vs.* French is not a decision upon the code, but upon the act of 1843; that the cases since the code, in which it is cited, do not and could not literally adopt it; that Smith *vs.* Foster only requires a *substantial* compliance with the law; that Woodfolk *vs.* Whitworth treats the question as still open in a case where "one or more of the particulars" in Thompson *vs.* French is omitted; and that his honor was in error when he virtually instructed the jury that the supreme court of Tennessee has a fixed, imperative, and inflexible rule upon the subject, or that its decisions require all the minutiæ suggested in Thompson *vs.* French to be complied with.

3. The court below erred in charging the jury that "it does not appear that any publication was in fact made, and that the circuit court of Knox county acquired no jurisdiction of said cause." It is admitted that publication is necessary under the code, (§§ 3518–3525,) and Rogers *vs.* Rush, (4 Cold., 272.) But in behalf of plaintiff in error it is insisted, that the "order of publication and the publication as made in the Knoxville Whig" (set out in record, p. 12) were a full compliance with the law. In addition to this it is expressly stated *in the judgment* (rec., p. 14) that it appeared to the court *that the attachment had been duly levied and that publication had been made according to law.* This is amply sufficient, according to Kilcrease *vs.* Blythe, (6 Hum., 378;) Hopper *vs.* Fisher, (2 Head, 253;) and Cornelius *vs.* Davis, (2 Head, 97;) Davis *vs.* Jones, (3 Head, 303;) Birdsong *vs.* Birdsong, (2 Head, 289;) Gunn *vs.* Mason, (2 Sneed, 637.) These and other Tennessee authorities not cited are relied upon to establish the positions, that the fact of publication is a matter of evidence; that the court was competent to determine it; that if the court erred in adjudging that it was duly made, the only mode of correcting the error was by setting out the evidence in a bill of

exceptions, and taking the case to the supreme court of the State by appeal or writ of error; and that the proceeding cannot be collaterally inquired into in this action of ejectment.

4. His honor erred in instructing the jury "that there was no authority for the rendition of said judgment, and that the levy of the attachment, the judgment of the court, and the sale by the sheriff were *utterly null and void*," and that the sheriff's deed conveyed no title, and could not be relied on in the defense of this action. There is error also in refusing to give the opposite instructions, as requested.

Under the code (§§ 3056 to 3058) the sheriff or his successor is authorized to make a deed to the purchaser of real estate sold at execution sale. Sections 3455 and 3500 authorize a levy upon real estate. Section 3534 declares that the judgment or decree, if executed, will be a protection to all persons acting under it, and will confer a good title to all property sold by virtue thereof. In this case it is to be observed that Brownlow, the plaintiff in the execution, became the purchaser at the sheriff's sale, and authorized the sheriff to convey to Cooper. This practice is sanctioned in Morgan *vs.* Hannah, (11 Hum., 122,) and Trotter *vs.* Nelson, (1 Swan, 7.)

The supreme court of Tennessee has always recognized the distinction between process which is irregular and voidable and that which is absolutely void for want of jurisdiction. In cases falling within the first class the proceedings cannot be collaterally assailed, and can only be annulled upon appeal or writ of error. In cases of the second class it is admitted that if there was a total want of jurisdiction in the court over the cause, the officer would be a trespasser in making a levy, and his deed would communicate no title.

Stephenson *vs.* McLean, 5 Hum., 382.
Lee *vs.* Crosna, 6 Hum., 281.
Reams *vs.* McNeil, 9 Hum., 542.
Ethridge *vs.* Edwards, 1 Swan, 426.
Mason *vs.* Vance, 1 Sneed, 178.

It has been repeatedly decided that a judgment which is not void upon its face cannot be collaterally attacked.

Britton *vs.* Cowen, 5 Hum., 315.
Thacker *vs.* Chambers, 5 Hum., 313.
Hall *vs.* Heffly, 6 Hum., 444.

If the court rendering the decree had jurisdiction of the subject-matter and person, the same will not be held void when collaterally attacked, although the proceedings were irregular and erroneous, and reversible on appeal or error.

Greenlaw *vs.* Kernahan, 4 Sneed, 371.
Kelly *vs.* Mize, 3 Sneed, 59.
Pinson *vs.* Ivey, 1 Yerg., 296.
Kirkland *vs.* Brown, 4 Hum., 174.

Under the code (§ 4225) the circuit courts of Tennessee are courts of general jurisdiction. By §§ 2746 and 2815 they have jurisdiction of actions of *tort* by summons, which may be aided by the ancillary attachment under the sections above referred to. In Tipton *vs.* Harris, (Peck, 424,) it was long since decided that every court of superior jurisdiction is the judge of its own authority under the general law, and that the jurisdiction does not depend upon incipient process or publication, but upon the general law. And in Matthews *vs.* Weeden, (4 Yerg., 166,) it was held that a court of general jurisdiction is to be presumed to have acted correctly, and the burden of showing the contrary is upon him who alleges it.

Guided by these principles, it is insisted for plaintiff in error that, as the general law of the State confers jurisdiction in cases like this, all that the court below could properly do was to ascertain from the general laws whether the case tried in the circuit court of Knox county was within those laws; and, having ascertained that it was, it should have presumed, in a collateral inquiry, and especially in reference to the action of a State tribunal, that the jurisdiction was rightfully exercised, and that the plaintiff in error acquired a valid title under the proceedings in the circuit court and by virtue of the sheriff's sale and deed. This general proposition is be-

lieved to be supported by Grignon *vs.* Arten, (2 How., 319, 341;) Elliott *vs.* Piersol, (1 Pet., 328, 340;) Voorhees *vs.* Bank, (10 Pet., 473;) Huff *vs.* Hutchisson, (14 How., 588;) Christmas *vs.* Russell, (5 Wall., 302;) McGavock *vs.* Bell, (3 Cold., 512;) and note to Drake on Attach., (2d ed., 448.

The attention of this honorable court is respectfully and especially invited to the opinion of Mr. Justice Baldwin in Voorhees *vs.* The Bank of the United States, (10 Pet., 468–478,) which fully sustains the views herein submitted.

THOS. A. R. NELSON,
HORACE MAYNARD,
Attorneys for Plaintiff in Error.

Abraham Lee 1843
Code - Lee 2445
11 Haugh 542
4 Sneed 458
2 Calloch 156
3 Calcott 145

IN THE

SUPREME COURT OF THE UNITED STATES.

JOSEPH A. COOPER, Plaintiff in Error,
vs.
JOHN DOE, Lessee of Robert Reynolds. } No. 450.

Brief for Reynolds.

The plaintiff in error asks for a reversal of the judgment of the Court, upon the ground that that Court erred in instructing the jury that no valid title to the land and premises in dispute passed to him by virtue of his sheriff's deed; and this is the sole question in this case. The plaintiff in error claims that the attachment proceedings, under which he derived his title and his deed, were not void; and not being void, must prevail until reversed by a direct proceeding by appeal or writ of error.

We insist for Reynolds, that the Court below expounded the law correctly. That the proceedings by attachment by Brownlow against Reynolds and others were not in conformity to the requirements of the attachment laws of the State of Tennessee, and were therefore void and could give no force or effect to the sheriff's deed to Cooper.

We assume that this Court will adopt and follow the decisions of the State Courts of Tennessee in the interpretation construction which they have uniformly given to the attachment laws of said State.

The Supreme Court of the State of Tennessee in the case of W. W. Woodfolk *vs.* James Whitmore, Ex'r, 5 Caldwell's Reports, page 561, say:

"An auxiliary writ of attachment is void, unless it is stated in the affidavit and alleged in the attachment that a suit has been brought by the plaintiff against the defend-

ant, the nature thereof, the tribunal in which it is depending, the amount of damages laid in the action, and that the cause of action is just."

This decision is but a repetition of the same construction which that Court had invariably given to the attachment laws of the State, as will be seen by the cases cited, to wit: Thompson *vs.* Cooper, 11 Hum., page 542; Morris *vs.* Davis, 4 Sneed, 953; Smith *vs.* Foster, 3 Coldwell, 140; Haynes *vs.* Gates, 2d Head., 598.

Not only were the proceedings by attachment in this case fatally defective for want of a proper affidavit, but there was no personal service on the def't Reynolds, (the appellee,) but not even an order of publication.

It is insisted for Reynolds, that no judgment could properly have been rendered against him. It was an action of trespass for an injury to the person and without the service of process or any appearance by the def't Reynolds; the verdict of the jury and judgment of the Court were utterly void.

It would be to us a novel proceeding if a judgment could be thus recovered in an action of tort for an injury to the person without any appearance or service of process on the def't. The judgment, therefore, against Reynolds being void, it follows that the sale and conveyance to Cooper, based upon such judgment, are likewise void and could communicate no title to Cooper, the appellant.

Up to the present time, the Supreme Court of the State of Tennessee continue to adhere strictly to their former decisions on the subject of attachments. We will refer to the case of Jesse J. Ingle *vs.* Hannah J. McCurry, administratrix of E. R. Herndry and Samuel P. McCurry, decided at Knoxville at the last September term of the Supreme Court of Tennessee. (*See manuscript opinion.*)

The record in this case presents a very singular proceeding. There was not a single step taken in the whole case that conformed to the law. The Court which rendered the judgment had no jurisdiction of the case, because there

was no appearance by Reynolds nor any service of process on him. *He was not in Court.*

Then the attachment was not supported by a sufficient affidavit.

There was no proper order of publication against the absent def't, Reynolds.

Reynolds and others were excluded from that part of the State by the existence of the war, in which state of case he could not have appeared and made any defense by reason of the laws of the United States then in force, and the proclamation of the President of the United States prohibiting all intercourse between the loyal and disloyal States or sections thereof.

The Court below, as will be seen, held that the proceedings in the Court at Knoxville, wherein the verdict and judgment were rendered against Reynolds, were void, and that Cooper's deed conferred no title on him. We insist, therefore, that the Court below committed no error in its exposition of the law, and we ask an affirmance of the judgment.

J. W. MOORE,
For Appellee.

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J. W. MOORE,
For Appellee.

4 Wallace Exparte Gaillard
9 Berger — Connections
11 Howard 6 & 3 Webster vs Reid
7 Johnsons Reports 505 Dash vs Van Kleeck
3 Dallas Calder & wife vs Bull & wife